

## REAL ESTATE TRANSFER REGULATION

The Brewster Board of Health voted to adopt the following Regulation at its meeting held on May 19, 1987, and amended on November 1, 1988, under the authority of Chapter 111, Section 31 of the General Laws of Massachusetts, to better protect the Public Health of the inhabitants of the Town of Brewster, Barnstable County, Massachusetts. The effective date of this Regulation will be January 1, 1988. All deeds recorded on or after January 1, 1988 will be subject to this regulation.

### REGULATION

Prior to selling, conveying or transferring the title to real property situated in the Town of Brewster and containing an existing Residential, Commercial or Industrial sewage disposal system, the Owner thereof shall have an open Inspection of said system(s). The inspection shall be performed by a Massachusetts Registered Professional Engineer, Massachusetts Registered Sanitarian or DEP approved System Inspector person who:

- (a.) in the opinion of the approving authority is qualified to perform such inspections;
- (b.) has one year documented experience in satisfactorily performing such inspections; and
- (c.) has used or gained skills that demonstrate sufficient competence to perform such inspections.

If it is determined by the Board of Health that the system constitutes a danger to the Public Health, the Board shall order the owner to make repairs or replace the system.

### PURPOSE

To determine and to protect the Public Health from potential and present sources of pollution to ground water or salt water from existing sewage disposal systems, the Board of Health requires that the Owner(s) of a developed property in Brewster obtain an open Inspection of the existing septic system prior to the time of the transfer of that property.

## SECTION I - DEFINITIONS

Preamble - All other definitions not in this Regulation will be defined by Title 5, 310 CMR 15.01.

1.1 COMPONENT Any septic tanks, distribution boxes and leaching facilities.

1.2 DEVELOPED PROPERTY A parcel of land with a man-made structure erected upon it which has affixed to it an in-ground sewage system(s).

1.3 FAILED SYSTEM A failed system is defined as one in which there is evidence of sewage flow to the surface; evidence of overload of the system; the system is in such a state of disrepair that it cannot function as originally intended; lack of a four (4) foot protective zone between the bottom of the system and ground water; or any other problem as defined by the Board of Health or its Director.

1.4 MARGINAL SYSTEM A marginal system is defined as having one or several of the following problems: The system could not be judged because of an extended period of non-use; there are problems with the individual components of the system or with the system location; records show excessive pumping three or more times within any eighteen (18) month period for residential or commercial property, except for required grease trap maintenance for commercial property; presence of visible ferric sulfide stains; the system is inadequate for intended use; system is located within 100 feet of a domestic water supply well, wetland or watercourse or any other problem defined by the Board of Health or its Director.

1.5 OPEN INSPECTION All components of the septic system(s) attached to the existing structure(s) will be uncovered and a visual inspection conducted.

1.6 SUBSTANDARD SYSTEM A system which does not conform to 310 CMR 15.00, the State Environmental Code, Title 5, Minimum Requirements for the Subsurface Disposal of Sewage and the Brewster Board of Health Regulations.

1.7 TRANSFER OF PROPERTY An act by which the title of a property is conveyed from one person to another except as noted in Section 4.1.

## SECTION II - STANDARDS

2.1 For the purpose of this Regulation, reference is made to the standards and provisions of Title 5 of the State Sanitary Code, and to the existing regulations of the Brewster Board of Health Regulations for Subsurface Sewage Disposal.

## SECTION III - ENFORCEMENT AUTHORITY

3.1 The Board of Health Director is authorized to issue Notices of Violation, Cease and Desist Orders, or other Administrative enforcement orders to compel compliance with the terms of these Regulations for Subsurface Sewage Disposal.

3.2 In addition to any other remedy, the Board of Health and/or its Director may take any enforcement action deemed appropriate, including but not limited to Criminal Prosecution, to seek a fine in accordance with Chapter 111, Section 31, or Civil Action in the Courts of the Commonwealth for injunctive relief or money damages or both, or Civil and Criminal enforcement.

#### SECTION IV - EXCEPTIONS

4.1 This Regulation shall not apply to a sale under power of sale contained in a bona fide mortgage affecting the property.

4.2 This Regulation shall not apply to a sale of property having a sewage system that has been installed, repaired or replaced and which has received a satisfactory inspection report from the Health Director within twenty-four (24) months of the closing, provided additional living space has not been added and/or there has been no change in intended use. The date of issuance of the Certificate of Compliance will begin the twenty-four (24) months time period. A copy of the Disposal Works Construction Permit and/or other evidence, approved by the Board of Health or its Director, must be submitted in lieu of the Certificate of Inspection thirty (30) days prior to each Real Estate Transfer.

4.3 In the case of a Title 5 system, the Board of Health may waive the requirements for an inspection in appropriate cases. All requests for waivers shall be in writing.

4.4 Real Estate Transfers otherwise subject to this Regulation which take place within two (2) years of an inspection under this Regulation and found to be in good working order, may be exempt from this Regulation upon review and approval by the Board of Health or its Director. A copy of the original Certificate of Inspection Form must be submitted to the Board of Health or its Director for review thirty (30) days prior to Real Estate Transfer.

4.5 Sellers and buyers who transfer an existing structure with the intent to demolish and replace the existing system with a Title 5 system may apply to the board of Health or its Director for exemption from this Regulation. The seller and the buyer must comply together in writing showing that both parties have agreed to the arrangements and accept joint responsibility for seeing that the new system is installed. An Engineer hired by the party(s) must provide in writing

that he/she has been contracted to do the plan and that a preliminary survey of the lot in question shows that a septic system in compliance with Title 5 and Town of Brewster Regulations can be installed on the

lot. A proposed time frame for the demolition and installation must be submitted at the time of application.

#### SECTION V - INSTRUCTIONS

5.1 The Inspection by the Engineer or Sanitarian should take place not more than 180 days nor less than thirty (30) days prior to the transfer of property. The Board of Health must receive the Inspection Form and Certificate of Compliance within seven (7) days of the Inspection. In addition, the Engineer or Sanitarian should give copies to the Owner and to any Buyer or Broker identified with the transfer. In the event there is no buyer at the time of Inspection, copies must be given by the Owner to the Buyer preferably before the property is put under agreement.

5.2 Establishing ground water levels: Unless exempted from this requirement by the Board of Health or its Director, septic systems or components of systems that are located below elevations of fifteen (15) feet (using USGS mean sea level datum) and/or within 100 feet of a wetland are required to have a test boring or deep observation hole dug in order to establish the ground water level. When depth to ground water has been measured it should be adjusted to reflect the adjusted depth using the procedures outlined in Estimating Highest Groundwater Levels for Construction and Land Use Planning - A Cape Cod, Massachusetts Example, Michael H. Frimpter and Martha N. Fisher. USGS Water Resources Investigations 83-412.

5.3 If the Inspection finds evidence of a failed system, such as sewage on the surface or sewage draining into any waterways or wetlands, the Board of Health or its Director shall determine within fourteen (14) days after receiving the Inspection Form whether or not the system constitutes a danger to the Public Health and whether and to what extent the system should be repaired or replaced. The Board of Health or the Health Director shall notify the owner by Certified Mail within seven (7) days of its determination, accompanied by any order requiring the system to be repaired or replaced.

5.4 If the Inspection finds evidence of sewage on the surface or draining into any waterways or wetlands, the Board of Health or its Director is to be notified by the Engineer or Sanitarian within twenty-four (24) hours.

5.5 If the Inspection finds the system to be "Marginal", the Board of Health or its Director shall decide within fourteen (14) days after receiving the Inspection Form whether or not the system constitutes a danger to the Public Health and whether and to what extent the system should be repaired, replaced, or be subject to further inspection as

the Board or its Director deems appropriate under the circumstances. The Board of Health or the Health Director shall notify the Owner by Certified Mail within seven (7) days of its determination, accompanied by any order requiring the system to be repaired, replaced or subject to further inspection.

5.6 If the Inspection reveals that the covers to the septic tank or cesspool are more than twelve (12) inches below the finished grade, the covers shall be brought up to within twelve (12) inches of the finished grade.

5.7 If the Inspection reveals that the sewage disposal system consists of a single cesspool, or cesspools, then the system shall be deemed substandard and must be upgraded to comply with 310 CMR 15.00, the State Environmental Code, Title 5, Minimum Requirements for the Subsurface Disposal of Sewage.

5.8 If the inspection reveals that the sewage disposal system leaching facility or facilities are located within 300 feet of a pond or lake, then the leaching facility or facilities shall be deemed substandard and must be upgraded to comply with 310 CMR 15.000, the State Environmental Code, Title 5 and Brewster Board of Health Regulations. If the setbacks required by this regulation cannot be attained due to lot configuration or other factors, the leaching component shall be located at a maximum feasible distance from the pond or lake as determined by the Board of Health or its director.

5.9 The allowable time for the repair, replacement or further inspection will be determined by the Board of Health or its Director, and will be contained in the order to the Owner.

5.10 If any repair or replacement is required, the Health Director shall inspect the work and make a written report thereof, stating that the work is satisfactory or unsatisfactory, and whether and to what extent further work or inspections are required.

5.11 Copies of the Inspection, Determination, Order and Report shall be filed with the Board of Health and shall be available for public inspection and copying.

Adopted:	May 19, 1987	Amended:	March 2, 1993
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Effective:	March 1, 1993	Effective:	September 1, 2006

Brewster Board of Health

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